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8
9 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1D-2009-67977

13 **DEBORAH LEVIN, P.T.**
14 **3531 Venture Drive**
Huntington Beach, CA 92649

A C C U S A T I O N

15 **Physical Therapist License No. PT 16990**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Officer of the Physical Therapy Board of California, Department of
22 Consumer Affairs.

23 2. On or about November 15, 1990, the Physical Therapy Board of California
24 issued Physical Therapist License Number PT 16990 to Deborah Levin, P.T. (Respondent). The
25 Physical Therapist License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2609 of the Code states:

"The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter."

5. Section 2660 of the Code states, in pertinent part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

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"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

•(h) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or the State Medical Practice Act.ö

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6. Section 2661 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or

1 revoked, or may decline to issue a license, when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal or when an order granting
3 probation is made suspending the imposition of sentence, irrespective of a subsequent
4 order under Section 1203.4 of the Penal Code allowing that person to withdraw his or
5 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
6 guilty, or dismissing the accusation, information, or indictment."

7 7. California Code of Regulations, Title 16, section 1399.20, states, in pertinent
8 part:

9 "For the purposes of denial, suspension or revocation of a license, pursuant to
10 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
11 considered to be substantially related to the qualifications, functions or duties of a
12 person holding a license under the Physical Therapy Practice Act if to a substantial
13 degree it evidences present or potential unfitness of a person to perform the functions
14 authorized by the license or approval in a manner consistent with the public health,
15 safety or welfare. Such crimes or acts shall include but not be limited to the
16 following:

17 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or
18 abetting the violation of, or conspiring to violate any provision or term of the Physical
19 Therapy Practice Act.

20 "...

21 "(c) Violating or attempting to violate any provision or term of the Medical
22 Practice Act."

23 8. Section 2234 of the Medical Practices Act states, in pertinent part:

24 "The Division of Medical Quality shall take action against any licensee who is
25 charged with unprofessional conduct.¹ In addition to other provisions of this article,
26 unprofessional conduct includes, but is not limited to, the following:

27 ¹ Unprofessional conduct under California Business and Professions code section 2234 is
28 conduct which breached the rules or ethical code of the medical profession, or conduct which is
(continued)

1 ð(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the violation of, or conspiring to violate any provision of this chapter.

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4 ð(e) The commission of any act involving dishonesty or corruption which is
5 substantially related to the qualifications, functions, or duties of a physician and
6 surgeon.

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8 9. Section 2239 of the Medical Practices Act states:

9 ð(a) The use or prescribing for or administering to himself or herself, of any
10 controlled substance; or the use of any of the dangerous drugs specified in Section
11 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
12 or injurious to the licensee, or to any other person or to the public, or to the extent that
13 such use impairs the ability of the licensee to practice medicine safely or more than
14 one misdemeanor or any felony involving the use, consumption, or self-
15 administration of any of the substances referred to in this section, or any combination
16 thereof, constitutes unprofessional conduct. The record of the conviction is conclusive
17 evidence of such unprofessional conduct.

18 ð(b) A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this section. The
20 Division of Medical Quality may order discipline of the licensee in accordance with
21 Section 2227 or the Division of Licensing may order the denial of the license when
22 the time for appeal has elapsed or the judgment of conviction has been affirmed on
23 appeal or when an order granting probation is made suspending imposition of
24 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
25 the Penal Code allowing such person to withdraw his or her plea of guilty and to enter

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27 unbecoming to a member in good standing of the medical profession, and which demonstrates an
28 unfitness to practice medicine. (Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564,
575.)

1 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
2 complaint, information, or indictment.ö

3 **COST RECOVERY**

4 10. Section 2661.5 of the Code states:

5 "(a) In any order issued in resolution of a disciplinary proceeding before the
6 board, the board may request the administrative law judge to direct any licensee
7 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
8 actual and reasonable costs of the investigation and prosecution of the case.

9 "(b) The costs to be assessed shall be fixed by the administrative law judge and
10 shall not in any event be increased by the board. When the board does not adopt a
11 proposed decision and remands the case to an administrative law judge, the
12 administrative law judge shall not increase the amount of the assessed costs specified
13 in the proposed decision.

14 "(c) When the payment directed in an order for payment of costs is not made
15 by the licensee, the board may enforce the order of payment by bringing an action in
16 any appropriate court. This right of enforcement shall be in addition to any other
17 rights the board may have as to any licensee directed to pay costs.

18 "(d) In any judicial action for the recovery of costs, proof of the board's
19 decision shall be conclusive proof of the validity of the order of payment and the
20 terms for payment.

21 "(e) (1) Except as provided in paragraph (2), the board shall not renew or
22 reinstate the license or approval of any person who has failed to pay all of the costs
23 ordered under this section.

24 "(2) Notwithstanding paragraph (1), the board may, in its discretion,
25 conditionally renew or reinstate for a maximum of one year the license or approval of
26 any person who demonstrates financial hardship and who enters into a formal
27 agreement with the board to reimburse the board within that one year period for those
28 unpaid costs.

"(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct."

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Which Substantially Relates to the Qualifications, Functions, or Duties of a Physical Therapist)

11. Respondent has subjected her Physical Therapy License No. PT 16990 to disciplinary action under sections 2660, as defined by Code sections 2660, subdivision (d), 2661 and Title 16 of the California Code of Regulations, section 1399.20, subdivision (a), in that she was convicted of a crime substantially related to the qualifications, functions, or duties of a physical therapist, as more particularly alleged hereinafter:

(a) On or about November 4, 2009, at 7:57 p.m., Respondent was driving her black Ford Mustang east bound in a parking lot in Huntington Beach, California, when Respondent's Ford Mustang hit an occupied car that was stopped or parked ahead of her.

(b) Huntington Beach Police officers were called to the accident scene. Respondent was in her car when officers arrived. Approaching her, the officer smelled the strong odor of alcoholic beverages on Respondent's breath, and observed that Respondent's eyes were red and watery. Respondent's pants were unzipped, her belt unfastened and she had urinated in her pants. Her speech was slurred.

(c) The officer administered standard Field Sobriety Tests to Respondent. She was unable to perform tests that required her to stand upright. On completion of the field sobriety tests, Respondent was arrested. Two blood alcohol tests registered 0.31% blood alcohol.

12. On or about November 4, 2009, Respondent was arrested for:

(a) Driving under the influence of alcohol/drug in vehicle in violation of Vehicle Code section 23152, subdivision (a), and

(b) Driving with a blood alcohol content of .08% or greater in violation of Vehicle Code section 23152, subdivision (b).

13. On or about December 21, 2009, Respondent was charged in the case entitled *The People of the State of California vs. Deborah Joan Levin*, Orange County Superior Court, Case No. 09WM11157, with the following misdemeanor criminal counts:

(a) Count 1: driving under the influence of alcohol/drug in vehicle in violation of Vehicle Code section 23152, subdivision (a), and

(b) Count 2: driving with a blood alcohol content of .08% or greater in violation of Vehicle Code section 23152, subdivision (b).

14. On or about January 28, 2010, Respondent pled guilty in the case entitled *The People of the State of California vs. Deborah Joan Levin*, Orange County Superior Court, Case No. 09WM11157, to the following misdemeanor criminal count:

(a) Count 2: driving with a blood alcohol content of .08% or greater in violation of Vehicle Code section 23152, subdivision (b).

15. On or about January 28, 2010, Respondent was sentenced in Case No. 09WM11157 to three years informal probation, participation and completion of a 9 month alcohol program, attendance at a MAAD Victim Panel, and driving restrictions, among other probationary terms.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages to the Extent to Be Dangerous to Self or Others)

16. Respondent has further subjected her Physical Therapy License No. PT 16990 to disciplinary action under section 2660 and Title 16, California Code of Regulations, section 1399.20, subdivision (c), as defined by section 2239 of the Code, in that she used alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to herself, or to other persons or to the public, as more particularly described in paragraphs 11, 12, 13, 14 and 15 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 17. Respondent has further subjected her Physical Therapy License No. PT 16990
4 to disciplinary action under section 2660 and Title 16, California Code of Regulations, section
5 1399.20, subdivision (c), as defined by section 2234 of the Code, in that she committed acts of
6 unprofessional conduct as more particularly described in paragraphs 11, 12, 13, 14 and 15, above,
7 which are hereby incorporated by reference and realleged as if fully set forth herein.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 11 1. Revoking or suspending Physical Therapist License Number PT 16990, issued to
12 Respondent Deborah Levin, P.T.;
- 13 2. Ordering Respondent Deborah Levin, P.T. to pay the Physical Therapy Board of
14 California the reasonable costs of the investigation and enforcement of this case, pursuant
15 to Business and Professions Code section 2661.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.
- 17

18 DATED: June 28, 2010

Original Signed By:

19 STEVEN K. HARTZELL
20 Executive Officer
21 Physical Therapy Board of California
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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